

REMARKS/ARGUMENTS

Prior to entry of this Amendment, the application included claims 12-31. No claims have been amended, added, or canceled. Hence, after entry of this Amendment, claims 12-31 stand pending for examination.

Claims 12-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the cited portions of U.S. Patent No. 5,923,744 to Cheng et al. ("Cheng").

Present Office Action Improperly Made Final

As an initial matter, the Applicants respectfully point out that the pending Office Action was improperly made final. A second or subsequent action is improper when "the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendments of the claims nor based on information submitted in an information disclosure statement . . ." (see, MPEP § 706.07(a) and 37 C.F.R. § 1.113). Neither is the case here. The Applicants' prior response contained no claim amendments, and the Applicants have not filed an IDS since the previous Office Action. But the claims now stand rejected under 35 U.S.C. § 103(a), whereas the claims were previously rejected under 35 U.S.C. § 102(b). Hence, this new ground of rejection was not necessitated by the Applicants' amendment or late-submitted prior art. The Applicants, therefore, respectfully request reconsideration of the finding that the pending Office Action should be final.

Rejections Under 35 U.S.C. § 103(a)

The Applicants respectfully traverse the rejection of all pending claims rejected under 35 U.S.C. § 103(a) since the Office Action has not established a prima facie case of obviousness with respect to any pending claim. Specifically, the Office Action does not cite a reference in the prior art that teaches or suggests each and every claim element and the Office Action does not cite a motivation that existed in the prior art to modify the reference to make the

Applicants' claimed invention. Hence, the Applicants respectfully request that the matter be immediately moved to allowance.

The Office Action responds to the Applicants' arguments by stating that they have been fully considered but are not persuasive. But it appears that the Applicants' arguments were sufficiently convincing that the pending Office Action concedes that the missing limitations are not present in Cheng's teachings. In fact, the Office Action recognizes many limitations as not being present (see, pp. 2-7). The Office Action, however, appears to argue that these limitations were old and well known in the art, but no citation is provided. This assertion appears to be based on facts within the personal knowledge of an employee of the office. As such, the Applicants respectfully traverse the rejection and direct attention to 37 C.F.R. § 1.104(d)(2), which requires an affidavit in support of the facts. In the absence of a citation or an affidavit, the Applicants maintain that all pending claims are allowable over the cited reference.

Moreover, the Office Action has not cited a teaching or suggestion of a motivation that one skilled in the art would be motivated to modify the teachings of Cheng and/or combine them with the prior art to make the Applicants' claimed invention. The Office Action appears to suggest that one would have been so motivated "in order to give the instruction to SSP to reject the call or to forward the call to a forward-to number." This reasoning appears to assign a missing function to a claim element and call it a motivation. Hence, there being no cited motivation, the Applicants respectfully request that the matter be immediately advanced to allowance.

Conclusion

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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/Irvin E. Branch/

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